



MEMORANDUM

To: Gary Horowitz
Robert Kelly
Thomas C. Geiser
cc: John A. Picciotto
William Taylor, IV
From: R. W. Smith, Jr.
Date: November 14, 2001
Subject: Merger Agreement

Will Taylor will be sending out to you later today the revised Merger Agreement reflecting the discussions that we have had over the last few days. I think that we are essentially complete on the various terms. I don't mean to blindside you on a new issue, but upon my review of everything last evening (I hope for the last time), I had some concern about the breadth of our non-solicitation clause and whether it appropriately dealt with the duty to provide information that has been articulated under Delaware law. Therefore, I have taken a crack at revising it to try to reflect what I understand to be current law. In this regard, see below a revised Section 6.14, together with a movement of the definition of "Superior Proposal" to the definition section. Let me know what you think.

RWS/kls
Enclosure

Section 6.14. Non-Solicitation.

So long as this Agreement is in effect, no CareFirst Company shall, and each shall use its Best Efforts to cause its representatives not to, directly or indirectly, solicit any proposal from a third party regarding a purchase, affiliation, or lease of all or a material part of the assets of CareFirst, whether by sale of capital stock, merger, consolidation, sale or lease of material assets, affiliation, joint venture, or other material transaction (a "Merger Proposal"). Neither the foregoing prohibition nor any other provision of this Agreement shall be interpreted to prohibit CareFirst from (a) making any disclosure of information required by law, or (b) providing information regarding CareFirst to, or negotiating with, any third party (provided such party is subject to an executed confidentiality agreement) that makes an unsolicited written Merger Proposal ; ~~provided, however, that prior to any such action referred to in clause (b), (i) if the Board of Directors of CareFirst shall have determined~~ concludes in good faith, after consultation with its outside legal counsel and financial advisors that such Merger Proposal, that the failure to provide such information or engage in such negotiations is or is reasonably likely to be inconsistent with the directors' fiduciary duties under applicable law. Prior to providing any information to any third party or entering into negotiations with any third party, CareFirst shall notify Purchaser of the Merger Proposal and shall provide to the Purchaser a copy of the Merger Proposal, or otherwise disclose the material terms of the Merger Proposal to the Purchaser.

With the changes to 6.14, Superior Proposal would then be defined in the definition section as follows:

"Superior Proposal" means a Merger Proposal which the Board of Directors of CareFirst determines in good faith, after consultation with its outside legal counsel and financial advisors, would be, if accepted by CareFirst on substantially the terms presented, is likely to be consummated and would, if consummated, result in a transaction superior to the one contemplated by this Agreement after taking into account all relevant factors, including, without limitation, the consideration to be received pursuant to such Merger Proposal~~(any such superior Merger Proposal being referred to herein as a "Superior Proposal") and (ii) CareFirst shall have promptly informed Purchaser of any such Merger Proposal and shall have delivered a copy of the Merger Proposal, or otherwise disclosed the material terms of the Merger Proposal, to Purchaser.~~

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